

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

EDUARDO CARO,

PLAINTIFF,

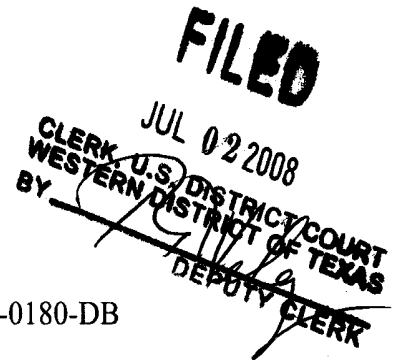
V.

PENSKE TRUCK LEASING CO., L.P.,

DEFENDANT.

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Cause No. EP-08-0180-DB



PLAINTIFF'S FIRST AMENDED ORIGINAL PETITION

TO THE HONORABLE COURT:

Plaintiff EDUARDO CARO ("Plaintiff and Mr. Caro") now files his First Amended Original Petition complaining of PENSKE TRUCK LEASING CO., L.P. ("Defendant") and respectfully shows as follows:

I. Discovery Level

1. Discovery is intended to be conducted under Level 2 of Texas Rule of Civil Procedure 190.

II. Jurisdiction

2. This is a proceeding authorized by and instituted pursuant to the Family & Medical Leave Act of 1993 (FMLA). 29 U.S.C. §2601, *et seq.* It is brought to prevent Defendant from denying, restraining or otherwise interfering with the rights guaranteed Plaintiff by the FMLA, and to recover damages and other relief authorized by section 2617(a) of the FMLA. 29 U.S.C §2617(a).

3. Jurisdiction is proper by virtue of section 2617(a)(2) which provides for concurrent jurisdiction in a State Court for actions arising under the FMLA. 29 U.S.C. §2617(a)(2).

III. Parties

4. Plaintiff is a citizen of the United States and a resident of Texas. He is an employee and an eligible employee within the meaning of the FMLA. 29 U.S.C § 2611.

Plaintiff has been subjected to unlawful employment practices committed within the State of Texas.

5. PENSKE TRUCK LEASING CO., L.P. is an employer within the meaning of section 2611(4) of the FMLA in that PENSKE TRUCK LEASING CO., L.P. employs and has employed 50 or more employees for each working day during each of twenty or more calendar work weeks during the applicable time period, and is engaged in commerce or in an industry or activity affecting commerce. Defendant PENSKE TRUCK LEASING CO., L.P. obtained service through its registered agent.

IV. Facts and Causes of Action

6. Plaintiff would show that PENSKE TRUCK LEASING CO., L.P. violated the FMLA with respect to him in the following and other respects:

- (a) by firing him on or about 02-27-08, without providing him the leave entitlement guaranteed by the FMLA because of his own serious health condition;
- (b) by interfering with, restraining or denying plaintiff's exercise or his attempts to exercise his rights provided by the FMLA;
- (c) by discriminating and or otherwise retaliating against him in violation of the FMLA.

7. All conditions precedent to the filing of this action have occurred or have been fulfilled.

V. Damages

8. Plaintiff seeks statutory damages, back pay, front pay and or lost wages and benefits in the past and future, all actual monetary losses, liquidated damages, attorney's fees, expert witness fees, costs, interest and such other and further legal and equitable relief to which Plaintiff is entitled pursuant to the FMLA.

9. Plaintiff is entitled to actual damages, including pecuniary damages, mental anguish or emotional pain and suffering, inconvenience, and loss of enjoyment of life in the past and in the future, and such other and further relief to which Plaintiff is entitled because of the actions and or omissions complained of above.

10. Additionally, to the extent permitted by law, Plaintiff is entitled to recover punitive damages because Defendants acted with malice as contemplated by Chapter 41 of the Texas Civil Practice and Remedies Code. Tex. Civ. Prac. & Rem. Code, Ch. 41.

VI. Jury Demand

11. Plaintiff demands this case be decided by jury as allowed by Texas Rule of Civil Procedure 216.

VII. Request for Disclosure

12. Pursuant to Texas Rule of Civil Procedure 194, Defendant is requested to disclose the information and material described in Rule 194.2(a)-(k).

VIII. Prayer

MR. CARO respectfully prays that he recover from Defendant PENSKE TRUCK LEASING, CO., L.P. statutory damages under the FMLA, actual damages, and punitive damages under Texas law, plus prejudgment interest, post-judgment interest and such other and further relief to which he may show himself to be justly entitled, in law and in equity. The amount sought herein is within the jurisdictional limits of the court.

SIGNED on this 26th day of May, 2008.

Respectfully submitted,

CHAVEZ LAW FIRM
2101 N. Stanton Street
El Paso, Texas 79902
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By: /s/Enrique Chavez, Jr.
Enrique Chavez, Jr.
State Bar No.: 24001873
Attorney for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that on May 26th, 2008, I electronically filed the foregoing document with the clerk of the court for the United States District Court, Western District of Texas, using the court's electronic case filing system. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorney's of record who have consented in writing to accept that Notice as service of this document by Electronic means:

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